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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Guidelines on international events and forced evictions

Report of the Secretary-General

1. In its resolution 1994/39 the Subcommission, reaffirming that every woman, man and child has the right to a secure place to live in peace and dignity, recognizing that the practice of forced evictions involves the involuntary removal of persons, families and groups from their homes and communities, resulting in increased levels of homelessness, the loss of livelihood, landlessness, inadequate housing and living conditions and growing levels of poverty, and aware that forced evictions can be carried out, sanctioned, demanded, proposed, initiated or tolerated by a range of actors, strongly urged Governments to undertake immediately all necessary measures, at all levels, towards eliminating the practice of forced eviction, in particular those Governments on whose territories forced evictions are currently planned to take place. It decided to consider the issue of forced evictions at its forty-seventh session under the agenda item "The realization of economic, social and cultural rights" and to determine at that session how most effectively to continue its consideration of the issue.

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2. In paragraph 12 of the same resolution, the Subcommission requested the Secretary-General to prepare a series of guidelines on international events and forced evictions, in accordance with paragraph 172 of his analytical report (E/CN.4/1994/20). Although these guidelines were not requested for the forty-seventh session of the Subcommission, the Secretary-General has considered it worthwhile to submit some preliminary observations about the drafting of such guidelines. The present report should therefore be seen as an effort to solicit the views of the Subcommission on how best to give implementation to the request contained in its resolution 1994/39.

3. Paragraphs 171 and 172 of the analytical report read in part as follows:

> "... evictions often occur in connection with major international events, such as Olympic Games, beauty pageants, official State visits, international conferences, etc., which, on the one hand, have positive implications for the host country such as media attention and higher revenues but, on the other hand, should not be seen as reasonable justifications for the practice of force evictions.
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> "There thus seems to be an arguable need for the drafting and adoption of guidelines for the planning of international events, which could be initiated by such United Nations bodies as the Commission on Human Rights and the Commission on Human Settlements."

4. Examples of such international events were given in paragraphs 52 and 53 of the analytical report of the Secretary-General. There were mass evictions of squatters in Zimbabwe, in 1991, prior to the visit of Queen Elizabeth II and the meeting of the Commonwealth Heads of State, which were justified on the grounds that such poverty would cause "severe embarrassment to the Queen". In the case of the 1988 Olympic Games in Seoul, the land needed for sports stadiums, accommodation and the enhancement of the image of the host country led to an extensive demolition and redevelopment programme. Plans surrounding the 1996 Olympic Games in Atlanta are similarly threatening several communities with forced relocation.

5. Another example brought to the attention of, among others, the Subcommission, was that of Thailand, where in 1991 it was reported that over 200 slum dwellers would be evicted prior to the convening of an IMF and World Bank meeting in Bangkok, under the justification of providing "good scenery" for the World Bank and IMF officials. 1/ Ironically enough, in Istanbul, where the Habitat II Conference will take place, 50,000 persons (11,000 families) were reported to be threatened with forced eviction by the end of 1994. 2/ Prior to the convening of the Non-Aligned Movement Summit in Jakarta in September 1992, demolition of the homes of over 10,000 residents took place, to create a "green space". Though compensation was provided to some dwellers, those affected complained that both cash payments and alternative dwellings were totally inadequate compared to their losses. 3/

6. Commentators have said forced evictions are almost always announced before they are carried out (whether or not they are legal or illegal), and consequently preventative measures designed to avoid these acts are

frequently possible. This concurs with the findings of the Secretary-General, who, in his analytical report, observed that in most cases evictions can be prevented and in all cases the adverse consequences can be avoided.

7. Although some evictions may be unavoidable and, under law, acceptable and reasonable, the human cost of forced evictions, such as the loss of a secure, neighbourly environment and social network critical for survival, the breaking up of communities, the lack of access to employment and the loss of culturally or traditionally significant sites, can be so harsh and demeaning that any justification for evictions must be evaluated in these terms and in accordance with generally recognized principles of international law. In cases where evictions are unavoidable, the Secretary-General argues, an obligation would exist on the part of the proponents of evictions to undertake measures to compensate the victims, so as to reduce the adverse consequences to a minimum.

8. The Commission on Human Rights, in its resolution 1993/77, affirmed that the practice of forced evictions constituted a gross violation of human rights, in particular the right to adequate housing and urged Governments to undertake immediate measures, at all levels, aimed at eliminating the practice. It also urged Governments to offer legal security of tenure on all persons currently threatened with forced eviction and to adopt all necessary measures giving full protection against forced eviction, based upon effective participation, consultation and negotiation with affected persons or groups.

9. The Committee on Economic, Social and Cultural Rights, in its General Comment No. 4 (1991), considered that instances of forced eviction are prima facie incompatible with the requirements of the International Covenant on Economic, Social and Cultural Rights and could only be justified in the most exceptional circumstances and in accordance with the relevant principles of international law (E/1992/23/annex III, para. 18). Moreover, in its General Comment No. 2 (1990), the Committee stated that international agencies should scrupulously avoid involvement in projects which involved among other things, large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation (E/1990/23/annex III, para. 6).

10. The need for better legal protection in the case of forced eviction is among the findings of the representative of the Secretary-General on internally displaced persons, as well as of the Special Rapporteur of the Subcommission on population transfer, whose mandates are closely related to that on forced evictions, as was described in the Secretary-General's analytical report. The Special Rapporteur on population transfer has suggested that the Subcommission begin work on a draft declaration on the subject of forcible population transfers and the implantation of settlers and settlements. The representative of the Secretary-General on internally displaced persons has pointed out the need to provide adequate and effective protection to the internally displaced through compiling and evaluating existing legal norms and developing guiding principles for bridging possible gaps.

11. The need for legislative protection against all manifestations of the practice of forced evictions thus seems to have found wide support. Legislation would create a framework of built-in parameters of acceptable

action by all actors capable of instigating the eviction process, and would serve to enhance and operationalize existing government obligations to respect housing rights.

12. The drafting of guidelines on planning international events and forced evictions could contribute to this process. However, as was stated in the Secretary-General's analytical report, guidelines might provide a tacit acceptance of the practice of eviction. It should be made clear, therefore, that developing guidelines on forced evictions can only be a partial solution. They are important but should not be allowed to be used as a rationale for encouraging the eviction process, nor viewed as a panacea for addressing the human component of this practice. If pursued faithfully and realistically by Governments, international agencies and others, the most important role of guidelines - discouraging and deterring the eviction process - can assist in finding real alternatives to this continuing violation of the human right to adequate housing.

13. It is submitted to the Subcommission that United Nations guidelines on forced evictions should be based on the following human rights considerations: the principle of non-discrimination; the need for participation; the need for taking decisions with the informed and free consent of the people concerned; the unlawfulness of force and coercion; access to courts; the right to appeal; the right to compensation and to seek remedial action and should include particular attention for women and vulnerable groups, such as indigenous ethnic minorities and the landless.

14. Specific elements to be considered in the drafting of guidelines on planning international events and forced evictions include:

The discouraging of external donors if evictions are likely to result from the planned event;

Public hearings conducted prior to the decision to adopt the plan in order to address the likelihood of evictions in connection with the event;

Persons threatened with forced eviction shall have the right to bring the matter before a court of law and the right to appeal before a higher court;

If no alternative to eviction exists, minimum periods of warning, possibilities for relocation and adequate financial compensation and participation in the process must be guaranteed.

15. Major multilateral institutions have adopted resettlement guidelines: the World Bank in 1990, the Organization for Economic Cooperation and Development in 1991, the Inter-American Development Bank in 1990 and the Asian Development Bank in 1992. The objective of these guidelines is to ensure that the population displaced by a project receives benefits from it, rather than suffering from the severe economic, social and environmental problems that traditionally accompany involuntary resettlement, such as: the loss of productive assets and income sources; the dispersion of community structures

and kin groups and the weakening of social networks; and the diminishing of cultural identity, traditional authority and the potential for mutual help.

16. The above-mentioned guidelines are based on policy considerations which have much in common with human rights concerns, such as:

(a) Involuntary resettlement should be avoided or minimized where feasible, exploring all viable alternative project designs.

(b) Where displacement is unavoidable, resettlement plans should be developed. Displaced persons should be (i) compensated for their losses at full replacement cost prior to the actual move; (ii) assisted with the move and supported during the transition period in the resettlement site; and (iii) assisted in their efforts to improve upon their former living standards, income earning capacity and production levels, or at least to restore them.

(c) Community participation in planning and implementing resettlement should be encouraged.

(d) Resettlers should be integrated socially and economically into host communities so that adverse impacts on host communities are minimized.

(e) Land, housing, infrastructure and other compensation should be provided to the adversely affected population, indigenous groups, ethnic minorities and pastoralists who may have usufruct or customary rights to the land or other resources taken for the project.

(f) Since women are to a great extent responsible for making the natural resource base productive, planning for relocation should consider their preferences and should address their specific needs and constraints.

17. It is submitted that any human rights guidelines on planning international events and forced evictions should first of all be based on the consideration that most of the planned evictions are avoidable. Therefore, emphasis should be placed on seeking viable alternatives to the practice. If this is not possible, human rights law itself recognizes that under "exceptional circumstances" and "in accordance with existing principles of international law" evictions can be undertaken. However, the conditions in which such evictions could take place should be precisely delineated.

18. The challenge in drafting such guidelines lies in providing for the taking of immediate measures aimed at eliminating the practice of forced eviction and in adopting all necessary preventive measures in order to protect potential victims of forced evictions, population transfers and internal displacement, who usually are the poorest and the most socially, economically, ecologically and politically disadvantaged and vulnerable sectors of society.

19. The members of the Subcommission are invited to consider the present report, with a view to proposing further elements that could enhance the drafting of guidelines on international events and forced evictions for the consideration of the Subcommission at its forty-eighth session.

Notes

1/ "A global survey of forced evictions: a violation of human rights", prepared for the forty-third session of the Subcommission, August 1991 by Habitat International Coalition.

2/ Scott Leckie, When Push comes to Shove: Forced Evictions and Human Rights, Habitat International Coalition, 1995.

3/ "Forced evictions: violations of human rights", Paper prepared for the World Conference on Human Rights, Centre on Housing Rights and Evictions, June 1993.